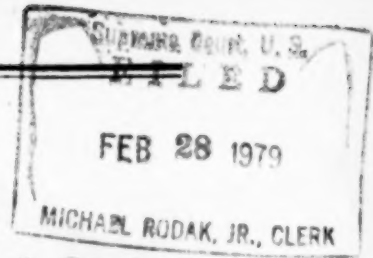


IN THE



Supreme Court of the United States

OCTOBER TERM, 1979

No. 78-1256

MRS. INEZ WALLER

Petitioner

VERSUS

MISSISSIPPI STATE HIGHWAY COMMISSION

Respondent

SUPPLEMENTAL APPENDIX TO THE PETITION
FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF MISSISSIPPI

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SUPPLEMENTAL APPENDIX

**SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1979**

NO. 78-1256

MRS. INEZ WALLER.....PETITIONER

V.

**MISSISSIPPI STATE HIGHWAY
COMMISSION..... RESPONDENT**

**ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF THE STATE OF MISSISSIPPI**

OPINION OF THE CHANCERY COURT OF LAFAYETTE
COUNTY, MISSISSIPPI, DATED AUGUST 8, 1977

IN THE CHANCERY COURT OF LAFAYETTE COUNTY,
MISSISSIPPI IN VACATION 1977

MRS. INEZ WALLER	COMPLAINANT
V.	NO. A-6478
STATE HIGHWAY COMMISSION	
OF MISSISSIPPI,	DEFENDANT

OPINION OF COURT

An application for a Special Court of Eminent Domain was filed in the Circuit Court of Lafayette County on or about September 12, 1975, which was styled "State Highway Commission of Mississippi vs. Wayne Waller", Cause No. 101.

The State Highway Commission was seeking to condemn a tract of land for highway purposes and named "Wayne Waller, Owner" as the Defendant. Trial was had in response to said application on January 9th and 10th, 1976, and resulted in a judgment for Mr. Waller in the sum of \$14,740.00. Judgment for said amount was signed by Circuit Judge W. W. Brown on or about January 12, 1976. Mr. Waller was paid the amount of the judgment.

On August 12, 1976 Mrs. Inez Waller filed a declaration in the Circuit Court of Lafayette County, Cause No. 8967, in which she alleged that she owned a one-half undivided interest in the real estate which was the subject of the condemnation suit by the Highway Commission against her husband, Wayne Waller; and that she had not conveyed her interest to the Highway Commission and that same had not been condemned in the lawsuit which was tried, the tenancy in common having been established by deeds referred to in pleadings,

which are recorded in Deed Book 119, page 469 and Deed Book 124, page 88. Copies thereof having been made exhibits to the declaration.

A motion was made by the defendant to transfer the matter to the Chancery Court of Lafayette County, which motion was sustained by the Circuit Judge. The order is recorded in Minute Book 0 at page 172, direct reference to which is here made.

The cause then became cause No. A-6478 on the docket of the Chancery Court of Lafayette County, and the same was heard by the Chancellor, who at the conclusion of the trial took same under advisement, with the provision that briefs might be submitted to him by the respective attorneys if they cared to do so.

The Court finds that Mrs. Inez Waller is the owner of an undivided interest in the real property which was condemned in the case of Wayne Waller; that such fact was not disclosed by either Mr. or Mrs. Waller during the trial of the eminent domain case; and that neither of them was asked about the ownership of an interest in the property by Mrs. Waller.

The Court further finds that the Defendant has exercised acts of ownership over said property as if they owned it, and have paid no consideration whatever to Mrs. Waller, and have obtained no deed or permit from her.

The Court is of the opinion and finds that the Eminent Domain proceeding was conducted as if the entire interest in the land was being condemned, that the witnesses who testified as to the value of the property and amount of damages were testifying as to the whole interest in the property, and by instruction No. P-6 instructed the jury "that the measure of damages in this case is the difference between the fair market value of all the property immediately before the acquisition and the fair market value of what remains after the land is acquired."

It is clear that this proceeding did not bind Mrs. Waller in any way.

This is not a case in which res judicata can be pleaded successfully as all of the elements necessary to make it a case of res judicata are not present.

This brings us to the question as to whether or not Mrs. Waller is estopped from claiming compensation for her one-half interest in the property. I would have to say, that under our Mississippi, United States and other decisions, of which there are quite a number, that she is not estopped as her interest has been or is being taken, without due process and without compensation as required by the Mississippi Constitution and the Code.

I am not going to quote at length from the decisions, but will include a few quotations which I consider pertinent.

However, I call attention to the fact that the Highway Commission had no authority on its minutes, and gave no authority on its minutes for the interest of Mrs. Inez Waller in the lands in controversy to be condemned. Therefore, Mrs. Waller's interest was not legally condemned and taken by the judgment in the Eminent Domain Case.

The following is quoted from QUATES VS. GRIFFIN, 239 So. 2d 803: "In Craft v. Everett, 115 So. 2d 133, through an estoppel case, we commented upon the failure of a vendee to inspect the records stating: Our view concerning the juristic position of a vendee or mortgagee who omits to inspect the records is that 'his ignorance, if it exists, is wilful, and he acts at his peril.' The preferable theory, however, is that the omission of an intending purchaser or mortgagee to investigate the state of the title of the property in question constitutes negligence on his part. . ."

The case of CHASE NATIONAL BANK VS. CITY OF NORWALK, 291 U.S. 431, 78 L. Ed. 894, states that "the law does not impose upon any person absolutely entitled to a hearing the burden of voluntary intervention in a suit to which he is a stranger . . . Unless duly summoned to appear in a legal proceeding, a person not privy may rest assured that a judgment recovered therein will not affect his legal rights."

One of the owners of a tract of land was present at a foreclosure sale and said nothing about her interest in the land in the case of SULPHINE VS. DUNBAR, ET AL, 55 Mississippi 255. The Court said: "She had a right to be silent. Her title to an interest in the land was indisputable, and the world had notice of it. She did nothing to mislead or deceive the appellant, or to induce him to purchase the land, and she was under no obligation to forbid the sale, or to warn the appellant not to buy."

The case of STATON VS. BRYANT, 55 Mississippi 261, said in part: "A party should ordinarily inquire into the title before he undertakes to appropriate property. He whose title is on record has given the notice which all are bound to know and respect."

The case of MISSISSIPPI STATE HIGHWAY COMMISSION VS. WEST states in part: "We are of the opinion that the doctrine of estoppel by judicial admission does not apply to the proceeding where the petitioner is required by statute to name as defendants all persons who may have an interest in the property sought to be condemned, and where the petitioner is required to act at its peril in seeing to it that all such parties are named."

The following is quoted from the case of MEYERTCORT VS. WARRINGTON, 19 So. 2d 433: ". . . courts will not give effect to an estoppel where the parties are equally well informed as to the essential facts, or where the means of knowledge was equally open to them."

In CRAFT, ET AL VS. EVERETT, 115 So. 2d 133, we find this significant statement: "When the condition of the title is known to both parties, or both have the same means of ascertaining the truth, there can be no estoppel."

The case of ROBERTS VS. BOOKOUT, 139 So. 175, contains the following statement: "Equity will not, on the mere ground of silence, relieve one who is perfectly acquainted with his rights, or has the means of becoming so. One should ordinarily inquire into the title before he undertakes to purchase land. He whose title is of record has given notice which all are bound to respect, and generally the law does not require more . . ."

With reference to the Highway Commission using witnesses who testified on the Eminent Domain case No. 101, I think the following rule as stated in 31A C.J.S., Section 387. Identity of parties is pertinent: "The general rule is that testimony taken in a suit to which a litigant was not a party cannot be used against him, and the evidence introduced in one case is inadmissible in a subsequent case between different parties."

With reference to privity between the parties the following is quoted from 31A C.J.S. Evidence, Section 388: ". . . the necessary privity does not arise from mere community of interest, or merely from the relationship between husband and wife,"

Once the judgment in Eminent Domain case No. 101 became final and no appeal was taken, it is final for all purposes., as written, speaks for itself, and cannot be modified, explained, enlarged, or affected. The judgment is final and cannot be tampered with.

Section 529.48 Am. Jur. 2d Judgments, state in part as follows: "In the strict sense of the term, parties to a judgment in the eyes of the law are those only who are named as such

in the record, and are properly served with process, or enter their appearance. . . ."

I am convinced that under the law and the facts in this case Mrs. Waller is entitled to be paid for the undivided interest she owned in the land which was condemned.

No proof was offered in this cause as to the value of her half-interest in the property. Complainant contends that she should be paid the same amount which was paid to her husband.

It is clear to me that the valuation places on the property by the witnesses in the eminent domain case was intended to be a valuation of the entire interest in the tract of real estate. There is nothing in the pleading or in the evidence indicating that Mrs. Waller owned an interest in the property, and she was under no legal obligation to disclose that information, unless she was asked about it.

There is nothing in the record to indicate that there was any intention or desire by the Highway Commission to mistreat Mrs. Waller or to unjustly take her property without compensation. It was simply an error on the part of someone.

I cannot agree with the contention that she is entitled to the same amount as was awarded her husband. The award to him was apparently for a one hundred percent interest in the property. I think we can assume that the amount awarded \$14,740.00 was a fair and reasonable consideration for the property.

In my judgment it would be fair and equitable to award her a judgment for one-half of the amount of the original award to Mr. Waller which is \$7,370.00 She shall therefore have judgment for that amount, plus six percent (6%) interest from September 15, 1975.

In addition she will be awarded \$2,456.66 for attorney's fees, this having been a case of inverse condemnation in which the defendant is due to be taxed with her expenses. The Defendant shall also be taxed with the court costs.

This the 8th day of August, 1977.

/s/ William H. Anderson
Chancellor

DECREE AND JUDGMENT OF THE CHANCERY
COURT OF LAFAYETTE COUNTY,
MISSISSIPPI, ENTERED AUGUST 22, 1977

IN THE CHANCERY COURT OF LAFAYETTE COUNTY,
MISSISSIPPI
AUGUST TERM, 1977

MRS. INEZ WALLER..... COMPLAINANT
V.
STATE HIGHWAY COMMISSION OF
MISSISSIPPI..... DEFENDANT

NO. A-6478

DECREE AND JUDGMENT

This day this cause came on to be heard on Declaration filed in the Circuit Court of Lafayette County, Mississippi, Summons for the State Highway Commission, properly and legally had, Motion of the Highway Commission to Transfer this cause to the Chancery Court of Lafayette County, Mississippi, Hearing on said Motion to Transfer, Order transferring said cause from the Circuit Court of Lafayette County, Mississippi, to the Chancery Court of Lafayette County, Mississippi, Answer to Original Bill, Motion to Strike some of the Matters and Affirmative Allegations contained in the Answer, Hearing on the Motion to Strike, Order Sustaining the Motion to Strike, testimony of witnesses, argument of counsel, Brief of Counsel, mature consideration by the Court, and Opinion of the Court.

The Court finds:

(1)

That the Court has jurisdiction of the subject matter and the parties in this cause.

(2)

That on or about the 12th day of September, 1975, in a Special Court of Eminent Domain of Lafayette County, Mississippi, the Highway Commission filed an application seeking to condemn a tract of land for highway purposes and named "Wayne Waller, Owner," as the Defendant. That trial was had on said application, resulting in a Judgment dated January 12, 1976, which Judgment was in the sum of Fourteen Thousand Seven Hundred Forty and No/100 (\$14,740.00) Dollars. Said Judgment was thereafter paid by the State Highway Commission of Mississippi.

(3)

That on the 12th day of August, 1976, Mrs. Inez Waller, wife of Wayne Waller, filed suit alleging she owned an undivided one-half interest in the tract of land which was the subject of the condemnation suit had against Wayne Waller and that her interest had not been condemned and that she had not been paid for her interest in the land as a result of the taking. Attached to said suit were Exhibits which established that Mrs. Inez Waller was tenant in common in the land taken.

(4)

That the Eminent Domain proceeding had against Wayne Waller is not res judicata as to Mrs. Waller's interest in the land nor is Mrs. Waller estopped from claiming compensation for her interest in the land.

(5)

That the Plaintiff-Complainant's interest in the land was not legally condemned and taken by the Judgment entered in the Eminent Domain Case of State Highway Commission of Mississippi v. Wayne Waller.

(6)

That the only proof as to value of Mrs. Inez Waller's undivided one-half interest in the property was that the jury's verdict of Mrs. Waller's interest in the Eminent Domain Case.

(7)

That the Court was of the opinion that Mrs. Waller's interest was worth and had a value of one-half of the original award to Mr. Waller, which was Fourteen Thousand Seven Hundred Forty and No/100 (\$14,740.00) Dollars or a value of Mrs. Waller's interest of Seven Thousand Three Hundred Seventy and No/100 (\$7,370.00) Dollars.

(8)

That Mrs. Waller be entitled to interest from the date of taking, which was the 12th day of September, 1976. The Court, in its opinion, granted interest at the rate of Six (6%) percent per annum. However, Section 75-17-7, Mississippi Code of 1972, Annotated, has been called to the Court's attention, which provides for interest at the rate of eight (8%) percent on all Judgments and Decrees rendered after July 1, 1975. Therefore, the opinion is modified to read eight (8%) percent rather than six (6%) percent.

(9)

That this, being a case of inverse condemnation, the

Defendant, State Highway Commission of Mississippi is due to be taxed with the expenses of Mrs. Waller, being attorney's fee, and a reasonable amount is found by the Court to be Two Thousand Four Hundred Fifty-Six and 66/100 (\$2,456.66) Dollars.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that Mrs. Inez Waller, Complainant herein, have a total Judgment against the Defendant in the sum of Nine Thousand Eight Hundred Twenty-Six and 66/100 (\$9,826.66) Dollars, together with interest at the rate of eight (8%) percent per annum from the 12th day of September, 1975, and all costs of this proceeding, for which execution may issue.

ORDERED, ADJUDGED, AND DECREED on this the 22nd day of August, 1977.

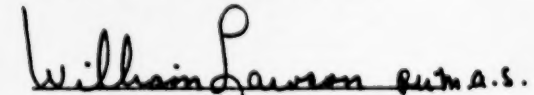
/s/ William H. Anderson
Chancellor

PROOF OF SERVICE

I, William Lawson, one of the attorneys for Mrs. Inez Waller, Petitioner herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 19th day of February, 1979, I served copies of the foregoing Supplemental Appendix to the Petition for a Writ of Certiorari to the Supreme Court of the State of Mississippi on the party thereto, as follows:

On the Mississippi State Highway Commission by and through its agent for the service of process, Honorable A. F. Summers, Attorney General for the State of Mississippi by mailing a copy in a duly addressed envelope, with postage prepaid, to said Attorney General at Post Office Box 220, Jackson, Mississippi 39205.

WILLIAM LAWSON
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Tupelo, Mississippi 38801


Counsel for Petitioner